

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

DONAL MARTIN McDONAGH and
MICHELE RAWLS McDONAGH

Case No. 12-27642 DSK

Debtor.

Chapter 13

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW Trust One Bank, a division of Synovus Bank (hereinafter "Trust One") and in support of its motion for relief from the automatic stay provisions of 11 U.S.C. § 362 would show unto the court the following:

1. The Debtors herein, Donal and Michele McDonagh filed a Chapter 13 case on July 20, 2012. As will be described in detail herein below, Trust One is the holder of two claims secured by the Debtors' residence. The Debtors' Chapter 13 Plan was confirmed by an Order docketed on September 28, 2012. The Plan provides for payment to Trust One on its home mortgage claims outside of the Plan.

2. Trust One is the holder of the August 29, 2007 Promissory Note from the Debtors Donal and Michele McDonagh ("Note 1"). Said Note is secured by a Deed of Trust on the real property which is the Debtor's residence located at 2416 Sanders Ridge, Germantown, TN, which Deed of Trust is recorded at Instrument No. 07136288 in the Register's Office of Shelby County, Tennessee. Said Note was modified by the Loan Modification Agreement dated June 30, 2008 as recorded at Instrument No. 08090271 in the Register's Office of Shelby County,

Tennessee. Attached hereto as collective Exhibit A and incorporated herein by reference are copies of the above-referenced documents.

3. The Loan Modification Agreement requires monthly installment payments of \$6,037.12. The Debtors are in default with the post-petition installment payments to Trust One due October 1 and November 1, 2012.

4. Trust One is also the holder of the May 7, 2010 Promissory Note from Turas, LLC d/b/a Bella Viaggia ("Note 2"). Said Note is personally guaranteed by the Debtors and is secured with a Deed of Trust on the Debtors' residence. Said Deed of Trust is recorded at Instrument No. 10049133 in the Register's Office of Shelby County, Tennessee. Attached hereto as collective Exhibit B and incorporated herein by reference are copies of the above referenced documents.

5. The Note from Turas, LLC requires monthly payments of \$1,666.67 principal plus accrued interest. Turas, LLC and the guarantor Debtors are in default with the monthly installment payments to Trust One beginning with the June 15, 2012 installment payment, and all monthly payments thereafter.

6. The balance due as of the Petition date under Note 1 is \$578,884.18. The balance under Note 2 as of the Petition filing date is \$63,134.84. The Debtors' Petition lists the value of the residence as \$689,200.00. After allowing for real estate commission, the Debtors do not have any equity in the subject real property beyond the amounts owed to Trust One.

7. Trust One is not adequately protected while the Debtors continue in the use of the residential property without maintaining the ongoing payments under the first and second mortgage claims.

WHEREFORE, PREMISES CONSIDERED, your moveant prays:

1. That Trust One Bank be granted relief from the automatic stay provisions of 11 U.S.C. § 362 to allow the bank to proceed with foreclosure or to pursue any other appropriate legal remedy as to the real property located at 2416 Sanders Ridge, Germantown, TN; and

2. For such other further relief to which your movant may be entitled.

Dated: November 20, 2012.

Respectfully submitted,

/s/ Douglas M. Alrutz

Douglas M. Alrutz (BPR 11389)
Wyatt, Tarrant & Combs, LLP
1715 Aaron Brenner Dr., Ste. 800
Memphis, TN 38120-4367
Phone (901) 537-1000
Fax (901)537-1010

Attorneys for Trust One Bank, a division of Synovus Bank

CERTIFICATE OF SERVICE

I here by certify that on the 20th of November, 2012, a copy of the foregoing was served on the parties listed below by first-class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party:

James D. Gentry
Gentry Arnold & Mitchell, PLLC
5100 Poplar Avenue, Suite 2008
Memphis, TN 38137
Attorneys for Debtors

George W. Stevenson
5350 Poplar Avenue, Suite 500
Memphis, TN 38119-3697
Chapter 13 Trustee

Donal and Michele McDonagh
2416 Sanders Ridge
Germantown, TN 38138-6144

/s/ Douglas M. Alrutz
Douglas M. Alrutz

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